REGULAR MEETING

PUBLIC EMPLOYEES' RETIREMENT BOARD

August 9, 2007

The regular meeting was called to order by President Elizabeth Nedrow at 8:30 a.m. Thursday, August 9, 2007. Roll call was taken with all members of the Board being present except Mr. Jay Klawon, who was excused. Board members and staff present were:

Elizabeth Nedrow, President
John Paull, Vice President
Robert Griffith, Member
Troy McGee, Member
John Nielsen, Member
Terry Smith, Member
Roxanne Minnehan, Executive Director
Melanie Symons, Legal Counsel
Scott Miller, Legal Counsel
Anna Garza, Executive Assistant

OPEN MEETING

Jim Kembel, MACOP/MPPA/TIAA-CREF; Tim Jones, Nancy Quirino, and Perry Christie, Great West Retirement Services; Rick Ryan, Matt Norby, Ed Cleary, Doug Neil and Jack Trethewey, members of the Montana State Firemen's Association; Brand Boyar, BKBH; Tom Bergen, MEA-MFT; David Ewer, Budget Director; and Kim Flatow, Member Services Bureau Chief; Barb Quinn, Fiscal Services Bureau Chief; Kathy Samson, Defined Contributions and Education Bureau Chief; and Diann Levandowski, Assistant Fiscal Services Bureau Chief, joined the meeting.

MINUTES OF OPEN MEETING

The minutes of the open meeting of July 12, 2007 were presented. Mr. John Paull moved that the minutes of the previous open meeting be approved. Mr. Robert Griffith seconded the motion. Upon being submitted to vote, the motion carried with all six attending members voting aye.

Public Comment – Ms. Kathy Samson introduced Mr. Tim Jones from Great-West who announced that he was resigning and is now going to be the Western Region Manager for Great-West’s Bank Services Group, he also announced that Ms. Linda Ulrich will be replacing him effective September 1, 2007. Ms. Samson thanked him for his years of service.

Mr. Doug Neil from the Montana State Firemen’s Association asked for Board reconsideration of their decision on the Guaranteed Annual Benefit Adjustment (GABA) election at next month’s Public Employee Retirement Board meeting.

Ms. Roxanne Minnehan exhibited the Government Finance Officers Association award for excellence in financial reporting received for the FY 2006 Comprehensive Annual Financial Report (CAFR). The award has been received for eight consecutive years.

Mr. David Ewer, Budget Director joined the meeting to say hello. He mentioned that they got a lot done in the session, all worked together pretty well. He mentioned the discretionary 0.6% that was given to the agencies for personnel services. He further talked about the discretionary funds. They have been spending a lot of time trying to work with all of us to assure the best possible results with this historic discretionary money in the pay plan. There is more legislation that the Governor now signed into law; there are more reporting requirements on all of us. He then mentioned Senator Jones' Bill, HB 771. Mr. Ewer believes it is a very good continuation into our efforts, collectively, to keep getting together. Board of Investments has some new requirements as does Public Employees' Retirement Board. He believes the bill covers this very well. He mentioned that he, Roxanne, Dave Senn, and Carroll South need to get together, brainstorm and compare notes as to what it is we are doing and how each Board is affected. The idea is to try to put on one page this collective mission of retirement. He stated that they are eager to work with MPERA's Board and staff on issues of particular concern and also joint issues so they can get ahead of what needs to be done for the legislature. He mentioned the importance of having one mission and that it is not fragmented. He closed with thanking the Board for their service.

EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Executive Director

Informal Consideration – Troy Volunteer Fire Department – Diann Levandowski

The Troy Volunteer Fire Department is asking for consideration of their Fiscal Year 2006 annual certificate which was received late. They have asked for consideration two other times over the past 10 years. They have filed late for FY 2006 and 2002. Whether there is an impact to the system due to the late reports was discussed. Ms. Levandowski mentioned that September 1 is only a few weeks away and she has only received about half of the certificates so far. She will be sending out a second request. She stated that in the handbook it does state that the Board will consider late certificates. Mr. Terry Smith moved to accept the late certificate for FY 2006. Mr. John Nielsen seconded the motion. The motion carried 6 to 0.

IRS Proposed VCP Agreement – 125 Plan – Melanie Symons

The IRS sent MPERA some draft compliance statements for PERS, Police and Firefighters. The draft is exactly what was represented to MPERA by their tax counsel several months ago, regarding the oral agreement between our tax counsel and Louis Leslie with the IRS. That is to ensure that the cities follow the rules and policies that were adopted by the Board for reporting cafeteria plan premiums. The IRS has agreed to address past non-compliance by the City of Bozeman for highly compensated employees only. The overpayment of benefits to non-highly compensated participants does not violate any federal pension law. Bozeman will have 150 days to go back and make the correction on the premiums for highly compensated employees. The IRS has approved the draft and is waiting for Board approval. Mr. McGee requested a copy of the draft showing what changes were made. Ms. Symons provided him with this later in the meeting. The issue of whether the premium should be included as regular wages for overtime purposes was discussed; it has not been resolved yet. Ms. Symons has created a memo on overtime for the

Executive Director to look at; it will hopefully go before the Board next month. Mr. Robert Griffith moved to approve the proposed IRS Voluntary Correction Program Compliance Statements that address 125 Plan issues in PERS, MPORS and FURS. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.

DC Plans Investment Consultant Contract – Kathy Samson

The Board approved the awarding of the contract last month. Ms. Symons stated that section four, Services, is the meat of the contract. The length of the contract and the possibility of extensions were discussed. Mr. John Paull moved to approve the contract between Wilshire Associates Inc. and the Montana Public Employees' Retirement Board. The contract covers the provision of investment consulting services from the date of execution through July 31, 2012. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.

Provisions Requiring Board Direction:

Pension Protection Act of 2006 (PPA) – Scott Miller

The Board was provided a chart in their packets which Mr. Miller explained. The PPA made a lot of changes. The PPA requires several things, the first three are required for cycle C Filings, mortality tables need updating, new option factors are required for non-spousal benefit payments, DB Plans interest rates, One for Five Service Purchase with 457 funds is now possible due to PPA. Currently, under tax code if a member takes normal retirement they can continue to work while receiving normal retirement, PPA now sets rules for what ages this is appropriate. One of the provisions of the PPA that could be difficult to deal with is elections. PPA now says that there is one election between a tax or non tax benefit per employer. In regards to 415 limits, MPERA needs to set up certain testing parameters to see whether we are complying with the limits. In-service distributions are also tied to Normal Retirement Age. Immediate distribution for Defined Contribution Plan Family Law Orders (FLO) is an optional provision in the PPA. As soon as a FLO is signed by the court, the Defined Contribution account would be split up according to the FLO and immediately distributed to the alternate payee. The optional PPA provision of Roth IRA options, would allow for a person to roll over their tax deferred money from our plan into a Roth IRA. If a non-spouse is the beneficiary of an account, the PPA will now allow them to roll that over into a tax deferred vehicle called an inherited IRA. In regards to termination certification, MPERA needs to ensure that when an employee terminates that there is no agreement between the employee and the employer that the individual is going to come back to work. Staff is also considering employer reporting of all employees for several purposes. Unless they report all employees, there is no way of knowing if they are not reporting someone who should be a member of PERS. In the optional provisions for the $3,000 health insurance exemption, Public Safety Officers now have the ability under PPA to exempt the first $3,000 they spend on health insurance from their taxes. There is discussion amongst public pension plans as to how this will be reported. The latest information is that we are not required to report the $3,000 that was paid to health insurance on the 1099R. There will be a space designated on the 1040 where employees can report that information. Safe Harbor Methodology was discussed. Pop-up and contingent annuitant was explained and discussed. Mr. Miller then brought to the Board's attention the Pension Protection Act Summary of Provisions affecting Government Plans administered by MPERA document that was also included in the Board's packets. Ms. Samson stated that just this week a bill was introduced to Congress with technical corrections for the PPA, the summary of these corrections was 25 pages long. The election issue and what could be impacted was further discussed.

IRS Compliance Cycle C Filing – Melanie Symons

Management team identified which of the issues need to be resolved right away for rule making purposes. Ms. Kim Flatow and Ms. Symons are going through MPERA's rules and amending them to be consistent with legislative changes, the PPA, etc. The reason for this is the Cycle C Filing, which is a process that is used by the IRS to determine whether or not retirement systems are qualified. The filing cycle is February 2008 and ends January 2009. MPERA's tax counsel is hoping to have everything necessary for our filing completed by October 2008. MPERA's rule drafts will need to be completed by the end of this calendar year. As part of this whole process, three decisions need to be made today.

Decision #1 – adopting the mortality tables, and interest crediting rates that our actuary uses, by rule. MPERA has never previously adopted them by rule. If adopted by rule, MPERA should be more in compliance with Montana law and will be doing what their tax counsel has recommended. Mr. Troy McGee moved to approve adopting by rule, mortality tables, interest crediting rates, and any other information required of their actuary when making decisions that impact the members' benefit determinations. Mr. Robert Griffith seconded the motion. The motion carried 6 to 0.

Decision #2 – specific actuarial tables to be used when there is more than 10 years difference in age between the member and their contingent annuitant when the contingent annuitant is not their spouse. Federal law requires the use of different actuarial tables in these instances. Currently, MPERA is not using a different table and needs to have their actuary prepare that alternate table and use it. Mr. John Paull moved that the alternate actuarial tables required by IRC 401(a)(9) be relied on by their actuary when determining option 2 and 3 benefits when the contingent annuitant is not the member's spouse and the difference in age between the contingent annuitant and the member is greater than 10 years. The Board will approve adopting the alternate table by rule if determined necessary. Mr. Troy McGee seconded the motion. The motion carried 6 to 0.

Decision #3 – whether or not the Board wants to, once again, allow our members to purchase 1 for 5 service using their 457 funds. This would require passing another rule. Mr. Troy McGee moved that the Board's administrative rules be amended to permit active members to purchase 1 for 5 service using 457 funds. Mr. Robert Griffith seconded the motion. The motion carried 6 to 0.

SAVA Communications – Roxanne Minnehan

Ms. Minnehan referred to the table that was included in the Board packets discussing, from our perspective, pros and cons of our plans. MPERA is trying to prepare for their presentation to SAVA on September 7, 2007. This is a rough draft of the pros and cons. She then mentioned that also included in the Board packets is a meeting schedule and work plan for SAVA. Mr. Terry Smith mentioned the possibility of giving the FURS participants another GABA election option; he believes this issue should be presented to SAVA at the September 7th meeting. He additionally mentioned the potential election for the DCRP participants who went from the DBRP plan to the DCRP and allowing them to have the option to go back. He mentioned that Colorado has this option in their plan. It gave those participants who opted to go into the DC plan the option to go back to the DB plan. It was discussed whether bringing this up at this SAVA meeting is appropriate. How the Cycle C filing impacts these types of elections was discussed in detail. Mr. Smith discussed an area in regards to forfeitures in the DCRP and the possibility of stepping the forfeitures over a 5 year period due to the vesting of the participants. He suggests at the end of the first year they would be eligible for 20% of their employer contribution, at the end of their second year they would be eligible for 40% of their employer contributions, at the end of their third year they would be eligible for 60%, fourth year 80%, and at 5 years they are fully vested. Mr. Smith stated that our forfeitures are growing exponentially and this would be one way to temper the revenue that we are dragging from these forfeitures in the DCRP. It was general consensus that this should be included at the SAVA meeting. Mr. Miller was asked to follow up on the option that Colorado has available for their DC participants. The Board then discussed the three year highest annual compensation potential for salary spiking issue, in regards to it being a con for our plan. Ms. Minnehan mentioned that a lot of plans are moving to 5, 7 or 10 year averaging. Whether the current three years is adequate or should be increased was discussed. Mr. Robert Griffith moved to take the three year highest annual compensation potential for salary spiking issue off the schedule for the SAVA meeting. Mr. John Paull seconded the motion. The motion carried 6 to 0.

<u>DCRP Fee Review</u> – Barbara Quinn/Kathy Samson

MPERA needs to review assessment of fees annually. The Board was provided with a spreadsheet in their packets with historical information and projections. Ms. Quinn explained the spreadsheet to the Board members. The DC Plan has not been around long enough to come up with reliable trends. The basis points or the fees are based upon assets, which are going to fluctuate with the market. Thinking of this, it would seem a good idea to have some type of reserve available. The Board would want to decide what level they want the reserve to be at and how would it be addressed if the reserve starts to go below this level. There is quite a bit of reliance on forfeitures in the administrative account. Ms. Samson mentioned that we should be careful of our reliance on trends or forfeitures due to their volatility. If you decrease fees, then have to increase them again, it is much more difficult to raise fees then it is to lower fees. If MPERA continues to allow their administrative account to increase, there is a possibility of other things that could be done with this money, such as adding additional services. Mr. Terry Smith mentioned that he believes that the Board should bring the administrative fees that are charged to the DC participants more in line with what the DB participants pay, which is 20 basis points. He additionally stated that if we lowered the basis points to 20, by June 30, 2009 we are going to have approximately a million dollars in that account. Leaving the money in the participants account and not putting it into a large account would be in the best interest of the participants. The Board then discussed what the reserve should be. Whether additional services are needed was discussed, Ms. Samson stated that possibly in the area of communication with our DC participants is an area where we could do more. The possibility of a one or two year reserve amount was discussed. It was general consensus that the Board would be more comfortable lowering the fees to 25 basis points as opposed to 20 basis points. Mr. Terry Smith moved to reduce administrative fees from 50 basis points to 25 basis points effective the first quarter of Fiscal Year 2008. Mr. John Paull seconded the motion. The motion carried 6 to 0.

<u>Approach to Non-Union Staff Compensation</u> – Scott Miller

Mr. Miller stated that this is a follow up from his presentation from the last meeting. The Board was provided a copy of the original pay plan document that MPERA used for the Union staff, in their Board packets. It was mentioned that MPERA's plan has already been approved by the Department of Administration. The pay plan states that other means of gathering market data may be used as needed and approved by the Department of Administration. The Board has a constitutional authority to administer the system. Ms. Beth Nedrow proposed a motion stating that because the Board has a fiduciary responsibility to administer the systems in the best interest of the participants and for that purpose it requires that they pay the non-union staff according to the MOSER's survey. The Board believes they already have approval for using the MOSER's survey because it's in the existing pay plan, which was implemented with the approval of the department over the years; therefore, use the pay plan with the MOSER's survey. Mr. McGee stated that if the Board passes a motion on this then they've actually laid down a line. In his opinion the Board has two possibilities, one is to go ahead and do it and only two things can happen, one they disallow it and the Board states what can we do to fix it, or the Board states constitutionally they can do this. He believes MPERA shouldn't draw a line up front. He proposes to have the Executive Director propose salary increases for the staff and the Board will propose a salary increase for the Executive Director. He further proposed to bring the pay plan up to date and go forward with it. Mr. John Paull proposed a motion to use the MOSER's survey in preparing the salary recommendations that they will present to the Department of Administration based on past practices of using the MOSER's survey. Mr. Miller stated that staff will take the most recent pay plan, update it to the current market salary survey that the Board directs them to use and include it in the September Board meeting agenda for approval. It was the Board's general consensus to have Mr. Miller prepare the pay plan using the same surveys and same broadband pay guidelines that they have used historically and also have proposals from the Executive Director for salary increases. Mr. Paull withdrew his motion in light of this new proposal.

Out-of-State Travel Authorization – Northwest Pension Peers Conference

Mr. Troy McGee moved to approve the out-of-state travel authorization allowing Roxanne Minnehan, Melanie Symons, Barb Quinn, Kathy Samson, Kim Flatow and June Dosier to attend the 2007 annual Northwest Pension Peers Conference in Reno, Nevada, October 9-12, 2007. Mr. John Paull seconded the motion. The motion carried 6 to 0.

Set Board Meeting Dates and Board Retreat – 4th Quarter:

Board meeting dates were set as follows:

There will not be a Board Meeting held in October.

November Board Meeting: Thursday, November 1, 2007
Board Retreat: Friday, November 2, 2007
December Board Meeting: Thursday, December 13, 2007

Mr. John Nielsen moved to approve the set Board Meeting and Board Retreat dates. Mr. John Paull seconded the motion. The motion carried 6 to 0.

Board Education – Plan Choice Rate – Scott Miller

Mr. Scott Miller addressed the question of "What is the Plan Choice Rate?" Mr. Miller handed out the definition from the statutes of the Plan Choice Rate to the Board. The Plan Choice Rate was created to reduce the impact on the Defined Benefit (DB) Plan from individuals choosing the Defined Contribution (DC) Plan. He stated that from an actuary's prospective there is a possibility that people will choose the plan choice rate that would have created a gain in the DB Plan because of their young age, their tendency to move on, which would have created a gain in the DB Plan if they had stayed with the DB Plan. He stated that people that would have created gains for the DB Plan might be seen as likely to choose the DC Plan. The initial Plan Choice Rate tried to take into account two things; one was the unfunded liability attributable to the members of the DB Plan who chose the DC Plan; and second, that change in the normal cost of the DB Plan that may result from a particular demographic moving over from the DB Plan into the DC Plan. The plan choice rate is set at 2.37%. Mr. Miller discussed the different subsections from the original version of section 19-3-2121, MCA. Mr. Miller stated that when reviewing these subsections, a provision specifically requires us to use the DB Plan that was in effect when the DC Plan went live. He mentioned that one issue is what DB Plan characteristics were to be considered when looking at the unfunded liability allocation. In this case the statute specifically states that the DB Plan characteristics at the time the DC Plan went live is what is to be used to determine normal cost. Mr. Miller stated that he thinks this is important from an allocation perspective. He further discussed the subsections. He pointed out that subsection 5 directs how the Board is to determine whether the Plan Choice Rate is sufficient to actuarially fund the appropriate share of the DB Plan's unfunded liabilities. The time frame in which those unfunded liabilities must be paid off was set as a number of years to actuarially fund the DB Plan's unfunded liabilities as of the June 30, 1998 actuarial valuation. Mr. Miller stated that Chris Bone, the Legislature's actuary, most likely looked at the unfunded liability as of June 30, 1998. He projected that about 15% of the members would transfer over to the DC Plan and so he took 15% of the unfunded liability amount at that time. Then he looked at the normal cost of the DB Plan in effect in 1998 and the difference between what the contribution level is and the normal cost. The difference is what is available to reduce the unfunded liability. Mr. Miller stated that the normal cost is what is used to pay for the benefits that are being accrued by the members right now. At the time, the difference between the contributions and the normal cost was 2.37%, which is where the Plan Choice Rate number came from. The Board is required to monitor whether the Plan Choice Rate is sufficient to pay off the liabilities within that schedule, and if not, the Board is required to make the recommendation to change the Plan Choice Rate. Mr. Miller then discussed unfunded liability. The normal cost is the cost assigned to an average member for a given year such that it would meet the continuing cost of that particular benefit if contributed each year starting with the date of membership. The statute requires the Board to use the 12.21% or the normal cost as of June 30, 2002, taking into account the 2001 benefit increases.

Mr. Miller then mentioned that Mr. Terry Smith had some concerns in regards to the allocation of the unfunded liability, whether it was done correctly or not, as well as the implementation of the DC Plan. Mr. Miller stated that he has done some research into this. Mr. Smith stated that these are complicated issues and difficult to understand. Mr. Smith believes the proper thing for the Board to do is have Chris Bone perform a limited scope audit and report on the unfunded liability allocation. He stated that MPERA doesn't have an opinion from an actuary telling them that they correctly implemented the plan. He believes that the estimated unfunded liability in June of 2003 and how much was allocated to the new plan, that the 2.37% is used to pay off, needs to be looked at and verified, to give assurances that it was done correctly. Mr. Miller stated it is more of a statutory interpretation issue than an actuarial issue. He stated that the statute itself states how to divide the unfunded liability. The statute was amended in 2001 to change how the unfunded liability is looked at. Instead of "DC Plans appropriate share of the unfunded liability", it was changed to read "DC members' appropriate share of the unfunded liability". With the change in the statute, the actuary looks at the people who elect the DC Plan, applies the assumptions that have been adopted to determine what the present value of their DB Plan benefits would be, and then looks at what that person's share of the unfunded liability is. If you look at the fact that the auditor audited Milliman's work as far as the DB Plan goes and their assessment of the unfunded liability in the DB Plan and came to within 0.11%, indicates a very high degree of confidence in Milliman's work as far as making those determinations for present value of benefits and the unfunded liability. Mr. Miller stated that he has a four page document that he just finished drafting regarding this issue. Mr. Smith stated that the key is whether it was an appropriate share of the unfunded liability. He stated that based on the design of the Plan Choice Rate, was the allocation to include 100% of the unfunded liability or should it have been 80% of the participants money that was taken out, due to the fact that the participants that left, did not take 100% of their contributions, they took 80%. Mr. Smith stated that to allocate 100% really creates a double dip. We are charging them to keep the plan whole and then they are being charged again for the unfunded liability to keep the plan at 100%, when in fact, those assets were still with the plan. It is a design question that Mr. Smith believes only Chris Bone could answer. He believes that $5M is over allocated and creates a situation where they are double dipping on the DC participants. This issue was further discussed. There was discussion presented to support that this amount was correctly allocated. It was mentioned that the Plan Choice Rate is reviewed every year. Mr. Smith stated that he still believes that Chris Bone can shed some light on this issue. Mr. McGee stated that he would prefer not to talk to Chris Bone he believes the Board should talk to our actuary. The suggestion of having Mr. Smith, Mr. Miller, and the actuary, Mark Johnson getting together to discuss this issue further was discussed. It was mentioned that MPERA needs to look at the cost of this and the possibility of some other avenues to pursue rather than having a meeting. It was mentioned that statutory interpretation is not the actuary's responsibility.

<u>Fiscal Year 2007 Budget Results</u> – Barbara Quinn

Ms. Barbara Quinn presented the FY 2007 budget results. The Board was provided a spreadsheet in their packets. The fiscal year officially closed on July 21, 2007. All bills have been paid. She then explained the overall budget. Personal Services was 98%, Other Services was 81%, Supplies and Materials were 87%, Communications were 46%, Travel was 53%, Rent was 99% due to this being a known cost, Repairs and Maintenance were 23%, Other Expenses were 69%, and the overall budget as a whole was 87%. Some items that Ms. Quinn highlighted were: DC Plan salaries were 105.46% due to management allocations. Under Other Services, Legal Fees for all plans were 103.7% expended. The DB contract with Goetz was budgeted at $25K and we have paid $55K as of June 30, 2007. Under Supplies and Materials, Data Processing supplies was 146% expended for all plans. There was some toner we had purchased for a printer that became unserviceable; we were able to resell the toner cartridges for $100 each, however, original cost was approximately $280. Under Repairs and Maintenance, MPERA's insurance policy on equipment rather than buying warranties has saved money overall in this process. In summary, for the DB plan we were 87%, DB Education was 82%, DC was 99%, DC Education was 103%, and the 457 Plan was 84%, overall we were at 87%. Under the DB, we had budgeted $165K under the cap and as of June 30, 2007 we were $624.6K under the cap. DC year to date line item for employer forfeitures amounts to $315,084. We were under 100% across all programs at fiscal year end.

MPERA Staffing Updates – Roxanne Minnehan

This agenda item was tabled until the September 13, 2007 Board meeting.

Board of Investments Update – John Paull

This agenda item was tabled until the September 13, 2007 Board meeting.

Litigation Update – Melanie Symons and Scott Miller

This agenda item was tabled until the September 13, 2007 Board meeting.

Conference Reports:

NASRA – Roxanne Minnehan

This agenda item was tabled until the September 13, 2007 Board meeting.

Future Board Meetings – Thursday: September 13, 2007.

Montana State Fireman's Association Annual Convention – Lewistown, July 18-20

This agenda item was tabled until the September 13, 2007 Board meeting.

SAVA Committee Meeting – September 7, 2007

This agenda item was tabled until the September 13, 2007 Board meeting.

Lockwood Rural Fire District – Resolution to Join FURS

This agenda item was tabled until the September 13, 2007 Board meeting.

Informational Summary Reports

Included in the Board packets were the following reports:
- Retirement Plan Transfers
- DCRP Asset Projections FY 2007
- DCRP Assets by Investment Option
- 457 Deferred Compensation Plan Assets by Investment Option

The following portion of the meeting relates to matters of individual privacy. The Board President determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

<u>SYNOPSIS OF THE CLOSED MEETING:</u>

<u>Litigation – TT Case</u> – Beth Baker

Ms. Beth Baker discussed litigation strategy with the Board regarding the TT case.

MINUTES OF CLOSED MEETING

The minutes of the regular closed meeting of July 12, 2007 were presented. Mr. John Paull moved to approve the minutes of the July 12, 2007 meeting. Mr. Terry Smith seconded the motion, which upon being submitted to vote, was duly carried with all six attending members voting aye.

<u>Contested Cases</u>

Informal Consideration – Mandatory Bill for Reporting Error, DOC

Ms. Kim Flatow introduced RK, Union and DOC personnel to the Board. MPERA has sent a mandatory bill to DOC regarding contributions for RK. This first came to our attention back in 2005. When they checked on RK's years of service RK was not reported to PERS correctly. DOC is asking to have the interest waived. Ms. Flatow stated that she strongly feels that we should have notified DOC in 2005 when RK first started telling us that he had worked at SRCTC. Ms. Flatow's recommendation would be for us to bring the interest from 1977 up to the end of October 2005, which is when we should have first notified DOC that there was a problem. It was discussed that we have to make the trust fund whole. Mr. Troy McGee moved to revise the bill to reflect interest to October 26, 2005 only, on the reporting error of RK. Mr. John Paull seconded the motion. The motion carried 6 to 0.

Informal Consideration – PERS, Retiree Refund Request, KI

KI retired as of April 1, 2007 and has received retirement checks for April, May, June, and July. KI is now requesting a lump sum payment of KI's retirement account. KI has received and accepted the first retirement check. At this point KI does not have any statutory right to receive a refund of the accumulated contributions without becoming an active employee again. Mr. Troy McGee moved to deny the request of KI for a lump sum return of accumulated contributions. Mr. John Paull seconded the motion. The motion carried 6 to 0.

Informal Re-consideration – PERS, Correction of Retirement Benefit Appeal, TB

TB received a retirement benefit duplicating TB's previous teaching service. The service error was corrected upon discovery. TB is appealing the correction to the monthly benefit and would like the incorrect amount of service shown on the estimate to remain as part of the retirement benefit calculation. The Board denied his request at the June Board meeting.

TB appeared before the Board, was introduced to all staff and Board members, was then sworn in and gave a testimony. Mr. Robert Griffith stated that the Board members are fiduciaries of the trust fund, and as this they would be committing fraud if they did what TB is proposing. He further stated that it is the law that if errors are made, they must be corrected. Mr. Robert Griffith moved to uphold the Board's decision regarding the adjustment to the retirement benefit of TB. Mr. John Paull seconded the motion. The motion carried 6 to 0.

Informal Re-consideration – PERS, Service Credit, JK

JK is disputing the amount of service credit for JK's employment from June 1961 through December 1972. The Board ruled to uphold staff determination in the June Board meeting. JK is asking the Board to reconsider their decision.

JK and JK's lawyer appeared before the Board. They were introduced to the attending staff and Board members. JK was then sworn in and both JK and JK's lawyer gave testimony. Mr. Robert Griffith moved to uphold the Board's decision regarding the service credit awarded to JK for JK's employment from 1961-1972. Mr. Terry Smith seconded the motion. The motion carried 4 to 2. Mr. Troy McGee and Mr. John Paull voted nay.

Informal Re-consideration – PERS, Disability Appeal, JC (via phone)

JC worked as an Employment Services Specialist. JC was diagnosed with anxiety, depression and neurofibromatosis. The case was reviewed by Dr. McEvoy who stated that JC is clearly upset but that this is not a permanently disabling condition and that JC needs treatment, but is able to do JC's usual work. The Disability Examiner recommended denial of disability benefits. The Board denied JC's request for disability benefits at the July Board meeting. JC is appealing this decision.

JC addressed the Board via telephone conference. JC's witness was put on the phone to introduce themselves to the Board. JC was introduced to the staff and Board members and was then sworn in. JC then presented testimony to the Board stating that JC's disability is neurofibromatosis and that the anxiety is a secondary complication. Ms. Katie Linjatie stated that at the time that she made her recommendation of denial, she did not have the physician statement from Dr. Reynolds, the genetic specialist, indicating that JC's neurofibromatosis is a disabling condition. Mr. John Nielsen moved to approve the request for disability with annual review. Mr. John Paull seconded the motion. The motion carried 4 to 2. Mr. Troy McGee and Mr. Robert Griffith voted nay.

Retirement Report

- Disability Claims:

    - GD has worked as a Certified Nursing Assistant. GD has been diagnosed with diabetes, morbid obesity, essential hypertension, congestive heart failure, chronic pain, bi-lateral osteoarthritis of the knees. Dr. McEvoy has reviewed the case and stated that GD cannot do nursing assistant work and he believes no annual review is necessary. The Disability Examiner agrees with the treating physician and Dr. McEvoy that GD is no longer able to do Nursing Assistant work. She recommends approval without annual review. Mr. Troy McGee moved to approve request for disability without annual review. Mr. John Paull seconded the motion. The motion carried 6 to 0.

    - DD has worked as a Police Officer. DD has been diagnosed with left shoulder pain consistent with bursitis/frozen shoulder, left elbow epicondylitis. The case has been reviewed by Dr. Carpenter who indicated that DD is not able to return to work as a

Police Officer. The Disability Examiner agrees with Dr. Carpenter that DD can no longer do police work. She recommends approval of duty related disability. Mr. John Nielsen moved to approved request for duty-related disability without annual review. Mr. Troy McGee seconded the motion. The motion carried 6 to 0.

- FL has worked as a General laborer. FL has been diagnosed with morbid obesity, essential hypertension, and congestive heart failure. The case has been reviewed by Dr. McEvoy who stated that in review of FL's medical problems, FL cannot do heavy work and he feels an annual review is necessary. The Disability Examiner agrees that FL cannot do heavy work; however, if FL were to improve FL's health condition, then may be able to return in the future. She recommends approval with annual review. Mr. John Paull moved to approve request for disability with annual review. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.

- <u>Finalized Service Retirements Disability Benefit Payments</u>

  The Finalized Service Retirements/Disability Benefit Payments report was presented. Mr. John Paull made a motion to approve the finalized service retirements and disability benefit payments. The motion was seconded by Mr. John Nielsen. The motion carried 6 to 0.

<u>Contested Case/Litigation Updates</u> – Melanie Symons

Ms. Symons reported on the *MANG* case – The response brief that has been filed was included in the Board's packets. It is missing pages 29 through 34. She will find the pages and provide them to the Board.

Ms. Symons reported on the *SW* case – The Hearings Officer issued a decision and MPERA won. SW has 20 days to appeal. It is a very well written decision that addressed all four issues and MPERA won all of them.

ADJOURNMENT

Mr. John Nielsen moved to adjourn the meeting and table the remaining agenda items until next months meeting. Mr. Robert Griffith seconded the motion. The motion passed with all six votes. Ms. Elizabeth Nedrow adjourned the meeting at approximately 4:35 p.m. The next meeting is scheduled for September 13, 2007, at 8:30 a.m. in Helena.